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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

Estate of MERLE JOHNSON, Deceased.

B256601

EVE O'NEILL,

(Los Angeles County
Super. Ct. No. BP101192)

Petitioner and Appellant,

v.

JANENE CURTIS,

Objector and Respondent.

APPEAL from a judgment of the Superior Court of Los Angeles County. Mitchell L. Beckloff, Judge. Affirmed.

Borden Law Office, Alex R. Borden and Priya Bahl for Petitioner and Appellant.

Law Offices of James A. Frieden and James A. Frieden for Objector and Respondent.

Eve O'Neill appeals from the probate court order awarding the assets of her late brother's estate to his daughter, Janene Curtis, because O'Neill was equitably estopped from challenging Curtis's right to the assets. We affirm because there was substantial evidence to support application of the equitable estoppel doctrine.

FACTS AND PROCEDURAL HISTORY

Janene Curtis, who was adopted at birth in 1964, discovered in 1987 that actor Troy Donahue was her biological father.¹ Donahue accepted Curtis as his daughter, held her out to the world as such, and established a close and loving relationship with Curtis and her three children. Donahue also introduced Curtis to his sister, Eve O'Neill, who embraced Curtis as her niece.

Donahue died in California in 2001 without a will. Sometime after Donahue's death, his close friend, Jane Nunez, told Curtis that the prescription painkiller Vioxx might have caused her father's death. Vioxx was then the subject of a New Jersey class action suit against pharmaceutical maker Merck & Co. In 2005, Curtis hired a New York law firm to represent her in that action, but was later advised that a probate estate had to be opened in order to pursue her claim. Because O'Neill lived in California and Curtis lived in Arizona, Curtis asked O'Neill if she would file a petition to administer Donahue's estate in order to take part in the Vioxx litigation on behalf of Curtis.

O'Neill agreed and hired lawyer Alex Borden to handle the matter. At O'Neill's request, Curtis sent O'Neill \$1,700 to cover the legal fees. In October 2006, O'Neill filed a verified petition for appointment as the administrator of Donahue's estate. The petition identified Curtis as Donahue's daughter. Attached to the petition was a document prepared by Borden and signed by Curtis stating that Curtis was Donahue's daughter and was nominating O'Neill to serve as administrator. A supplement to that petition said that Curtis waived the need to have O'Neill post a bond. O'Neill was appointed administrator of the estate in December 2006. Although in dispute, Curtis believed that O'Neill was

¹ Donahue's real name was Merle Johnson.

acting solely on Curtis's behalf with the intent to give Curtis any recovery from the Vioxx litigation.

In September 2009 Curtis, without O'Neill's knowledge, directed the New York lawyers handling the Vioxx claim to accept a settlement of \$300,000, netting Donahue's estate \$190,000. In April 2010, Curtis received a letter from lawyer Borden stating that, based on his recent conversation with Curtis, he learned she had been adopted at birth and therefore had no intestate succession rights to Donahue's estate. (Prob. Code, § 6451.)

In July 2010, Borden filed a petition for O'Neill that identified O'Neill as Donahue's only legal heir and asked the probate court to approve the Vioxx settlement. This was accompanied by a separate petition to determine that O'Neill was the sole heir because Curtis's adoption at birth cut off her intestate succession rights. Curtis filed an objection to that petition, along with a petition of her own contending that she was the rightful heir because: (1) her inheritance rights were restored under Family Code section 7611 when Donahue held her out to the world as his daughter; and (2) O'Neill was equitably estopped from asserting Curtis's ineligibility to inherit.

The probate court granted summary judgment for O'Neill, but we reversed solely on the ground that triable issues of fact existed concerning the equitable estoppel issue. (*Estate of Johnson* (Oct. 31, 2012, B237915 [nonpub. opn.] (*Johnson I*)).) On remand, the matter was tried as to that issue only, with Curtis testifying while O'Neill admitted excerpts from her earlier deposition transcript.

The trial court found for Curtis and awarded her the entire proceeds from the Vioxx litigation. In its statement of decision, the court expressly found Curtis credible and accepted her version of events. The probate court found that: (1) O'Neill either actually knew of the legal impediments to Curtis inheriting or that she was culpably negligent for failing to learn those facts; (2) O'Neill intended Curtis to act upon O'Neill's assertions that she would prosecute the Vioxx litigation on behalf of Curtis and then give her all the proceeds; (3) Curtis was unaware that O'Neill would renege; and (4) Curtis relied to her detriment on O'Neill's conduct.

STANDARD OF REVIEW

O'Neill contends that we must apply two standards of review. First, insofar as the probate court erred in applying equitable estoppel, a legal issue is raised that we review *de novo*. She also contends that the substantial evidence standard applies in determining “whether the trial court erred in finding that Curtis established her claim of equitable estoppel” As we see it, each is just another way of stating the other. The rule is firmly established that review of an equitable estoppel determination is an issue of law only when the evidence is not in conflict. (*Pittsburg Unified School Dist. v. Commission on Professional Competence* (1983) 146 Cal.App.3d 964, 980, fn. 4; *Hoopes v. Dolan* (2008) 168 Cal.App.4th 146, 155 (*Hoopes*); *Feduniak v. California Coastal Com.* (2007) 148 Cal.App.4th 1346, 1360 (*Feduniak*) [existence of estoppel is generally a factual question].) As we set forth in our discussion, the evidence is conflicting. We therefore apply the substantial evidence standard of review.

DISCUSSION

1. *The Equitable Estoppel Doctrine*

Evidence Code section 623 codifies the doctrine of equitable estoppel. It provides: “Whenever a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it.”

A party claiming an estoppel must prove four elements: (1) the party to be estopped must know the facts; (2) the estopped party must intend that his conduct shall be acted upon, or must act in a way that causes the other party to believe that was his intent; (3) the party asserting estoppel must be unaware of the true facts; and (4) he must detrimentally rely on the other party’s conduct. (*Estate of Bonanno* (2008) 165 Cal.App.4th 7, 22 (*Bonanno*).) If an estoppel is established, the estopped party is deprived of applicable rights or defenses. (*Ibid.*)

Equitable estoppel is not limited to intentional fraud. Instead, it has been more broadly applied “where the party to be estopped has engaged in inequitable conduct, induced another party to suffer a disadvantage, and then sought to exploit the disadvantage.” (*Hoopes, supra*, 168 Cal.App.4th at p. 162, citation omitted.) Estoppel refers to a conceptual pattern first articulated in the courts of equity which, when properly invoked, allows the court to ignore a fact or argument on the ground that allowing it would be intolerably unfair. (*Ibid.*)

2. *Evidence Relating to Equitable Estoppel*

Curtis testified that when she contacted O’Neill about serving as the estate administrator, O’Neill told her she did not want any money that might be recovered in the Vioxx litigation because she knew her brother would have wanted Curtis to have it all. Curtis told O’Neill she would give her some of the proceeds, but O’Neill said she did not expect any of the money. Curtis gave O’Neill \$1,700 to cover Borden’s legal fees and signed the document nominating O’Neill as estate administrator because she trusted O’Neill. At that time Curtis did not know that her adoption made her ineligible for intestate succession and believed she had the right to letters of administration.

Curtis testified that her New York Vioxx lawyers told her it would be best to have someone in California serve as estate administrator. Nunez, who had been Donahue’s closest friend, recalled telling O’Neill that O’Neill should become administrator because she had a provable legal relationship with Donahue. Nunez attributed that conversation in part to the fact that O’Neill had to sign the hospital release papers for Donahue’s body because she was the only person with an identified legal relationship to Donahue. O’Neill was aware that Curtis had been adopted at birth.

Nunez and O’Neill also discussed how O’Neill would act as administrator for Curtis’s benefit, with O’Neill stating that any money recovered from the Vioxx litigation would go to Curtis. O’Neill repeated that comment on multiple occasions. O’Neill, who was the beneficiary of Donahue’s life insurance policy, also said she was helping Curtis in order to be sure she received something from her father’s estate.

Curtis said she spoke with O'Neill about the Vioxx case monthly, helped O'Neill fill out case questionnaires, and was the person who communicated with the Vioxx lawyers. In addition to the \$1,700 she paid so Borden could have O'Neill named estate administrator, Curtis spent about 160 hours working on the case, including the retrieval of Donahue's medical records. Curtis spent so much time on the case because she believed she would receive the settlement proceeds. O'Neill agreed that she had spoken with Curtis about the Vioxx action more than 36 times, with Curtis sometimes following up to be sure O'Neill had transmitted questionnaires Curtis prepared and medical records she had obtained. O'Neill spent approximately \$50 in connection with the estate and never returned the \$1,700 Curtis paid for Borden's legal fees.

After Curtis approved the settlement in January 2010, she spoke with O'Neill and offered her \$10,000 for her help with the matter. O'Neill did not protest Curtis's acceptance of the settlement offer, repeated her earlier statement that she did not expect any of the proceeds, and believed Curtis was being very generous. One month later O'Neill told Curtis her children felt the arrangement was unfair and had urged her to keep all the money.²

Only a handful of excerpts from O'Neill's deposition were placed in evidence. According to O'Neill, she had already discussed joining the Vioxx litigation with her own children and was looking for a lawyer when Curtis contacted her about the case. Curtis told her that "she had tried to do it herself but she had no proof that she was Troy's daughter." When Curtis asked O'Neill to help, she agreed. After speaking with Curtis, O'Neill understood that she and Janene "could do it together." O'Neill acknowledged that she and Curtis had many conversations about the case, and, "[a]s time went on, she would ask me when we were going to get the money." O'Neill claimed she and Curtis

² O'Neill's opening appellate brief does not mention most of this evidence. Instead, contrary to the rules of appellate practice, she has presented a largely one-sided statement of facts. (*Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218.) Although Curtis asks us to deem this issue waived as a result, we exercise our discretion to rule based on all the evidence.

had no discussions about the ultimate disposition of any Vioxx settlement proceeds. However, O'Neill told Curtis that the money would go to "the family," by which O'Neill meant "all the people who loved Troy, including Janene."

O'Neill said that Nunez told her that Donahue would have wanted Curtis to get the proceeds of the Vioxx litigation. O'Neill said she would help Curtis do that, but was skeptical there would be any recovery and never discussed how the proceeds would be divided. O'Neill said that she intended to split the proceeds with Curtis in some unknown percentage. She never told Curtis of her intention to split the proceeds.

3. *There Was Sufficient Evidence to Invoke Equitable Estoppel*

In *Johnson I, supra*, we reversed the summary judgment for O'Neill based on decisions that applied the doctrine of equitable estoppel to questions of intestate succession: *Bonanno, supra*, 165 Cal.App.4th 7, and *Changaris v. Marvel* (1964) 231 Cal.App.2d 308 (*Changaris*). We described those decisions as follows.

"In *Bonanno*, the decedent's estranged wife, daughter, and girlfriend, settled their dispute about their respective rights to inherit by intestate succession. The wife then petitioned the probate court to let her portion of the estate pursuant to the settlement pass to her without administration through the probate court. The probate court granted the petition based on statutes that provided the wife the right to do so because the settlement agreement did not state she was exercising her right under companion statutes to have her portion of the estate administered. The *Bonanno* court reversed, holding that the effect of the ruling was to reduce the size of the estate and therefore the fees that the daughter could recover as the long-time estate administrator. Because the wife benefitted from the daughter's service as administrator, the court held the wife was estopped to assert her right to administer separately her portion of the estate. (*Bonanno, supra*, 165 Cal.App.4th at pp. 21-23.)

“In *Changaris v. Marvel* (1964) 231 Cal.App.2d 308, the decedent’s children joined in a wrongful death action with a woman who claimed to be decedent’s wife.³ They settled with the defendant, and their lawyer interpleaded the funds after the children contended the woman had not legally married their father. As a result, they contended, she was not entitled to inherit and therefore was not entitled to bring a wrongful death claim. The trial court found that the children were estopped to challenge the woman’s rights, and the Court of Appeal agreed. Underlying the Court of Appeal’s holding was evidence that the children knew beforehand of the facts that cast doubt on the validity of the marriage but agreed to let the woman join in the action and take part in the settlement, combined with the fact that allowing the woman to join in enhanced the amount of the settlement. (*Id.* at pp. 314-315.)” (*Johnson I, supra*, slip opn. at pp. 8-9.)

We went on to state: “In holding that the wife in *Bonanno, supra*, was estopped from asserting her right to avoid administration of her portion of the estate, the *Bonanno* court discussed not just the benefits the wife had gained by having the daughter administer the estate for years, it also mentioned the burdens this had placed on the daughter. These included: gathering, inventorying, and valuing the estate property, paying the estate’s creditors and taxes, defending actions against the estate and instituting actions for its benefit, and otherwise accepting responsibility for administering the estate. (*Bonanno, supra*, 165 Cal.App.4th at p. 23.) While the court did not expressly mention the detrimental reliance element of estoppel when describing these facts, it obviously had that element in mind.” (*Johnson I, supra*, slip opn. at p. 10.)

In light of the evidence from the probate court trial, we conclude that the rationale of these decisions still applies.⁴ We begin with the absence of one piece of evidence: O’Neill never said she agreed to act as administrator because she believed that Curtis had

³ *Changaris* was disapproved on another ground by *Corder v. Corder* (2007) 41 Cal.4th 644, 658-659.)

⁴ In doing so, we reject Curtis’s contention that we were obliged to apply those decisions under the law of the case doctrine.

the right to inherit the Vioxx proceeds without her assistance. Instead, O'Neill knew Curtis had been adopted and said that Curtis asked her to administer Donahue's estate because Curtis could not prove she was Donahue's daughter. Based on O'Neill's own deposition testimony, the evidence and its attendant inferences shows that she knew there were questions concerning Curtis's ability to inherit on her own that arose from the fact of her adoption.

Viewing the evidence most favorably to the judgment, the testimony of Nunez, Curtis, and O'Neill shows that O'Neill promised to act as administrator out of a sense of moral obligation to her late brother's presumed wish to give Curtis the full amount of any Vioxx settlement.⁵ Her promise to do so made sense in light of the fact that she was the sole beneficiary of Donahue's life insurance policy. As we see the evidence, O'Neill manifested the intent to relinquish any of her inheritable stake in the Vioxx litigation. In reliance on this, Curtis paid the legal fees necessary to have O'Neill named estate administrator in order to pursue the Vioxx litigation, and then invested time and effort in moving that case along.

These facts square with those in *Bonanno*, *supra*, 165 Cal.App.4th 7. Quoting again from *Johnson I* and our discussion concerning *Bonanno*: "We believe that Curtis incurred analogous burdens. Although Curtis did not administer Donahue's estate, she took on the work of gathering evidence and handling documents necessary to prove the wrongful death claim that was the sole reason for the estate's existence in probate court. According to Curtis, this required 160 hours of her time. Furthermore, instead of taking on the administration of the estate, Curtis gave up her opportunity to do so based on O'Neill's assurances, and paid O'Neill \$1,700 to cover the estate's legal costs. The estate attorney who received those fees gained approval for O'Neill to act as administrator based on unqualified statements under penalty of perjury that Curtis was Donahue's daughter. After the Vioxx litigation settled, the same attorney, acting on O'Neill's behalf, petitioned the probate court for all the settlement proceeds, contending

⁵ Even O'Neill concedes that she at least agreed to split the proceeds with Curtis.

for the first time that Curtis had no right to inherit them. As a result, Curtis has been compelled to enforce the promises that O'Neill made concerning Curtis's right to receive the settlement funds, thereby incurring more legal fees and costs. Despite all this, O'Neill refuses to return Curtis's \$1,700." (*Johnson I, supra*, slip opn. at pp. 10-11.)

O'Neill challenges both the sufficiency of the evidence and our reliance on *Bonnano* and *Changaris* on several grounds: (1) equitable estoppel may be used only defensively; (2) the doctrine cannot confer rights to which Curtis was not otherwise entitled because by statute her intestate succession rights had long since been eliminated; (3) there was no evidence that O'Neill's conduct and statements were intended to deceive or mislead Curtis; (4) Curtis did not detrimentally rely on anything O'Neill said or did because Curtis always believed she had the legal right to inherit and therefore O'Neill did not cause her to take any actions; (5) there was no evidence that O'Neill knew Curtis's adoption at birth cut off Curtis's intestate succession rights; and (6) *Changaris* is not applicable because, unlike the widow in that case, the amount of the Vioxx settlement was not the result of Curtis's participation in that action. We take each in turn.

(1) We do not believe that Curtis is using equitable estoppel offensively. That notion comes into play when a party has stated estoppel as a separate cause of action or seeks a measure of relief that is inequitable. (See *Money Store Investment Corp. v. Southern Cal. Bank* (2002) 98 Cal.App.4th 722 [estoppel stated as a separate cause of action]; *Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal.App.3d 1113, 1144 (*Pacific Gas*) [defendant that was sued to recover natural gas royalties mistakenly paid for many years could rely on estoppel to keep past payments, but attempt to use the doctrine to keep getting payments in the future was an improper offensive use].)

When the doctrine is raised in response to another party's claim in order to secure affirmative relief, however, its use is considered defensive. In *Klein v. Farmer* (1948) 85 Cal.App.2d 545 (*Klein*), the plaintiff was the administrator of an estate who sued the decedent's long-term caregiver to quiet title to shares of stock that the decedent promised the caregiver in exchange for her services upon the decedent's death. The caregiver

raised equitable estoppel as a defense, and also cross-complained to recover the value of her services should her equitable claim fail. The trial court denied the equitable claim and awarded the caregiver the value of her services.

The *Klein* court reversed and ordered that judgment be entered for the caregiver on her equitable claim. Citing to the predecessor of Evidence Code section 623 (former Code Civ. Proc., § 1962, subd. (3)), the *Klein* court held that the caregiver had invoked the doctrine “purely defensively, in opposition to the estate’s assertion of title to the stock.” (*Klein, supra*, 85 Cal.App.2d at p. 551.) The court also noted “in this lawsuit plaintiff is the actor, suing to quiet title to the stock and to recover it for the estate. Plaintiff is out of possession of the certificates which evidence ownership; . . . If plaintiff is to prevail she must establish a superior title in herself. Against plaintiff’s claim of title defendant pleads estoppel purely as a shield, seeking to retain as her own, stock which the decedent admittedly endorsed and turned over to her” (*Id.* at p. 554.)

Klein’s rationale applies with equal force here. We recognize that to some extent there is an offensive component to Curtis’s petition to determine that she was the true heir, but that pleading must be viewed within the overall procedural context. As in *Klein*, O’Neill was the one who initiated this matter by disavowing all she had said to Curtis and then bringing a petition to determine that Curtis had no inheritance rights. Although it is unclear who had possession of the settlement funds, O’Neill was clearly trying to establish a superior right to those funds in herself. Curtis therefore responded in the only way she could to protect her equitable rights—by filing objections to O’Neill’s petition, along with a petition of her own to determine that the assets of her father’s estate belonged to her. In short, Curtis was forced to raise the issue in response to O’Neill’s petition, which sought to cut her out entirely. Any theoretical offensive use of the doctrine by Curtis was therefore ancillary at best.

(2) The notion that equitable estoppel cannot confer new substantive rights has an entirely different meaning than the one O’Neill suggests. That concept was addressed in *Stein v. Simpson* (1951) 37 Cal.2d 79 (*Stein*). The *Stein* court equated it with the

principle that one who seeks equity must also do equity. (*Id.* at p. 83.) Therefore, in order to recover under equitable principles, the party invoking the doctrine may receive only that to which “ ‘he is justly entitled by the principles and doctrines of equity, *although not perhaps by those of the common law*,—something over which he has a distinctively equitable right.’ ” (*Ibid.* quoting Pomeroy’s Equity Jur. (5th ed.), § 386, italics added.) Under this principle, a party seeking equitable relief can be compelled to accommodate any equities favoring the other party. (*Dickson, Carlson & Campillo v. Pole* (2000) 83 Cal.App.4th 436, 445-446.) In short, the rule that O’Neill relies on means nothing more than that Curtis was required to prove her entitlement to equitable relief, even if that relief was not otherwise available. (See *Feduniak, supra*, 148 Cal.App.4th at p. 1371 [estoppel acts to prevent a party from asserting rights that exist at common law or by statute].)

O’Neill cites several decisions to support her contention, but none is applicable. For instance, she cites *Money Store, supra*, 98 Cal.App.4th 732 and *In re Marriage of Umphrey* (1990) 218 Cal.App.3d 647, 658, for the proposition that Curtis was not entitled to gain intestate succession by way of equitable relief because doing so would confer upon her a substantive right to which she was not entitled. However *Money Store* says no such thing, while *Umphrey* cites *Stein* for the proposition.

O’Neill also cites the following decisions: *Pacific Gas, supra*, 189 Cal.App.3d 1113; *Green v. Travelers Indemnity Co.* (1986) 185 Cal.App.3d 544 (*Green*); and *Peskin v. Phinney* (1960) 182 Cal.App.2d 632 (*Peskin*). None is applicable. As discussed above, the plaintiff in *Pacific Gas* was a utility company that sued to recover royalties mistakenly paid to recover natural gas from defendant’s well. The defendant raised estoppel as a defense, claiming that the utility could not recover for past payments and had to continue paying in the future. The Court of Appeal held that estoppel applied to past payments accepted in good faith, but did not apply to future gas extraction. (*Pacific Gas, supra*, 189 Cal.App.3d at p. 1144.)

In *Green*, plaintiffs in asbestos litigation against Johns Manville Co. sued the company’s insurers for bad faith insurance settlement practices (Ins. Code, § 790.03),

alleging that the insurers' delays in settling the claims led to the company's bankruptcy and a concomitant stay of their action. The insurers demurred on the ground of prematurity because the company's liability had not yet been determined. Plaintiffs opposed the demurrer in part on the ground of equitable estoppel, based on the insurers' alleged wrongful conduct having caused the bankruptcy. The *Green* court held that equitable estoppel was not available because the plaintiffs were using offensively and could not show any misrepresentations aimed at them. (*Green, supra*, 185 Cal.App.3d at pp. 555-556.)

Peskin involved an action by a factor who purchased fraudulent accounts payable from a lumber company. The Court of Appeal reversed the judgment awarding the factor 100 percent of the invoice amounts because his agreement with the lumber company called for him to pay 76 percent of the total and retain the rest to cover certain costs. The *Peskin* court rejected the factor's contention that he was entitled to the full amount under the doctrine of equitable estoppel. (*Peskin, supra*, 182 Cal.App.2d at pp. 636-636.)

Green and *Peskin* are compatible with the rule announced in *Stein, supra*, 37 Cal.2d 79 because each refused to give the party asserting equitable estoppel more than they were entitled to under equitable principles. They do not stand for the proposition advanced by O'Neill that estoppel may not confer rights to which a party would not otherwise be entitled. *Pacific Gas* is inapplicable because, as noted, Curtis did not use estoppel offensively and because she was the direct recipient of O'Neill's statements.

(3) and (4) An estoppel can arise in the absence of fraudulent intent so long as O'Neill's conduct induced Curtis to act as she did. (*Vu v. Prudential Property & Casualty Ins. Co.* (2001) 26 Cal.4th 1142, 1152-1153; *Hoopes, supra*, 168 Cal.App.4th at p. 162.) Even giving credence to O'Neill's deposition testimony, it is undisputed that Curtis paid the estate administration legal fees and expended 160 hours of time because O'Neill intended to split the Vioxx proceeds with her. Resolving all evidentiary conflicts in favor of the judgment, however, we find sufficient evidence that Curtis relied on O'Neill's promise that O'Neill would give all the settlement proceeds to Curtis.

(5) Because O'Neill made positive assertions that she was acting as administrator solely in order to enable Curtis to recover the entire Vioxx settlement proceeds, Curtis did not have to show that O'Neill actually knew that Curtis was not entitled to inherit from Donahue. Instead, because O'Neill was represented by counsel and knew Curtis had been adopted, that knowledge was imputed to her. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 490-491 & fns. 27 & 28.) Alternatively, there was sufficient evidence that O'Neill actually knew Curtis could not obtain a Vioxx settlement without her help. O'Neill knew that Curtis had been adopted and testified that Curtis "had tried to do it herself but she had no proof that she was Troy's daughter." Based on this, the probate court could conclude that O'Neill knew her participation was required in order to ensure that Curtis would recover.

(6) As for *Changaris*, the fact that the alleged wife's presence in the action increased the total settlement amount was a factor for the court, but was not the only one: the first point relied on by the *Changaris* court was the children's agreement to have her participate in the action despite the knowledge that led them to question whether she had any rights as either a widow or putative spouse. (*Changaris, supra*, 231 Cal.App.2d at p. 314.) In any event, Curtis contributed her time and effort to the success of the Vioxx litigation by, among others, completing case questionnaires for O'Neill and obtaining Donahue's medical records. Nothing else in the record shows what role Curtis might have had in determining the actual settlement amount.

DISPOSITION

The judgment granting Curtis possession of all the Vioxx settlement proceeds as Donahue's heir is affirmed. Respondent shall recover her costs on appeal.

RUBIN, Acting P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.